

Message

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**From:** Lee, Bessie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CD1A2CF2F38F4D0DA561C44C58223465-BELEE]  
**Sent:** 2/19/2014 4:48:56 PM  
**To:** Ford, Peter [Ford.Peter@epa.gov]; Busterud, Gretchen [Busterud.Gretchen@epa.gov]; Li, Corine [Li.Corine@epa.gov]  
**CC:** Scott, Jessica [Scott.Jessica@epa.gov]; ellen.durkee@usdoj.gov; Goldberg, Karen [Goldberg.Karen@epa.gov]; Knapp, Michael [Knapp.Michael@epa.gov]  
**Subject:** RE: interesting opinion related to Hopi case  
**Attachments:** Hopi Arsenic Complaint - Jan 2012.pdf

The Hopi Tribe filed a complaint on January 20, 2012 against the BIA regarding arsenic in the drinking water in the eastern portion of the Hopi Indian Reservation in hopes of trying to get funding from BIA for the Hopi Arsenic Mitigation Project (HAMP). (I had forwarded a copy of the attached complaint to Jonathan Binder on February 6, 2012. I think OECA-Headquarters had some follow up discussions about the complaint, but I was not in the loop.) The Hopi Tribe had asked for about \$20 million in claims. This is also the amount that the entire HAMP is estimated to cost to construct. I was told by a Hopi staff member that the Hopi Tribe was hoping that with a lawsuit in BIA's hand, it may increase the chance of BIA getting funding for the project.

In 2011, the Hopi Tribe informed BIA that its pro-rata share, if they wanted to tie into the HAMP, of the cost to construct the main trunk of the HAMP, was about \$5 million. BIA had verbally informed the Tribe that they did not have the money and that to obtain the money, they would need to go to Congress. The local (Hopi) BIA facilities had indicated to the Office of Indian Affairs that they wanted to be tied into the HAMP. It is my understanding that the 2012 complaint was to help push BIA into some sort of action.

Since 2012, the Hopi Tribe has been working with the Department of the Interior, Office of Indian Affairs, to have the local BIA facilities be formally part of the HAMP. In early 2013, the Hopi Tribe sent a letter to the Office of Indian Affairs requesting a formal response from the Office of Indian Affairs and that to show good faith, the Office of Indian Affairs needed to provide \$150,000 in funding for some of the planning activities needed to tie BIA into the HAMP. The Hopi Tribe, the Indian Health Service, and USEPA were told verbally by the Office of Indian Affairs in January 2014 that the \$150,000 had been set aside in 2013 and would be available shortly in 2014. The reason for the delay in providing the funds was that the Solicitor for the Office of Indian Affairs wanted to make sure that the pot of money that the \$150,000 was coming from could be used for the HAMP.

To date, Region 9 has provided about \$5 million in funding for the HAMP through the Drinking Water Tribal Set-Aside Program. The USEPA grant money has been used for the planning activities (e.g., NEPA, hydrogeological studies), as well as the drilling of two new source wells. It is my understanding that the Hopi Tribe will be contributing \$2 million to the HAMP. The Hopi Tribe will be applying for USDA-RD loan/grant for the remainder of the money. The Indian Health Service and HUD will also be funding agencies for the HAMP, but their funds would be accessed at later stages of the HAMP since their funds require the money to be used to connect people to water (e.g., construction of storage tanks, transmission mains). The two new source wells that have been drilled show arsenic levels around 2 to 3 ug/L, which is below the arsenic MCL of 10 ug/L.

Hope this information helps.

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Bessie Lee

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Drinking Water Office (WTR-6)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105  
Phone: (415) 972-3776  
Fax: (415) 947-3549  
E-mail: lee.bessie@epa.gov

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**From:** Ford, Peter  
**Sent:** Friday, February 14, 2014 10:54 AM  
**To:** Busterud, Gretchen; Li, Corine; Lee, Bessie  
**Cc:** Scott, Jessica; [ellen.durkee@usdoj.gov](mailto:ellen.durkee@usdoj.gov); Goldberg, Karen  
**Subject:** RE: interesting opinion related to Hopi case

## Ex. 5 Attorney Work Product (AWP)

Peter Z. Ford  
U.S. EPA Office of General Counsel  
202.564.5593

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**From:** Busterud, Gretchen  
**Sent:** Friday, February 14, 2014 1:36 PM  
**To:** Li, Corine; Lee, Bessie  
**Cc:** Ford, Peter; Scott, Jessica; [ellen.durkee@usdoj.gov](mailto:ellen.durkee@usdoj.gov); Goldberg, Karen  
**Subject:** RE: interesting opinion related to Hopi case

Thanks Corine – I've copied OGC and DOJ with your response.

## Ex. 5 Attorney Work Product (AWP)

Gretchen Busterud  
General Law Section Chief  
Office of Regional Counsel  
U.S. EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
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**From:** Li, Corine  
**Sent:** Friday, February 14, 2014 9:59 AM  
**To:** Busterud, Gretchen; Lee, Bessie  
**Subject:** Re: interesting opinion related to Hopi case

## Ex. 5 Deliberative Process (DP)

Bessie is the POC and is out of the office on Fridays.

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**From:** Busterud, Gretchen  
**Sent:** Friday, February 14, 2014 9:47:56 AM  
**To:** Li, Corine; Lee, Bessie  
**Subject:** FW: interesting opinion related to Hopi case

Do either of you know anything about the HAMP? Would our grants office know?

Gretchen Busterud  
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**From:** Ford, Peter  
**Sent:** Friday, February 14, 2014 8:41 AM  
**To:** Ford, Peter; Busterud, Gretchen  
**Cc:** Scott, Jessica; [ellen.durkee@usdoj.gov](mailto:ellen.durkee@usdoj.gov)  
**Subject:** RE: interesting opinion related to Hopi case

## Ex. 5 Attorney Work Product (AWP)

Thanks,

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**From:** Ford, Peter  
**Sent:** Friday, February 14, 2014 11:33 AM  
**To:** Busterud, Gretchen  
**Cc:** Scott, Jessica; 'ellen.durkee@usdoj.gov'  
**Subject:** RE: interesting opinion related to Hopi case

Hi Gretchen,

## Ex. 5 Attorney Work Product (AWP)

Please reply all when you respond.

Thanks,

Peter Z. Ford  
U.S. EPA Office of General Counsel  
202.564.5593

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**From:** Wehling, Carrie  
**Sent:** Thursday, October 17, 2013 2:10 PM  
**To:** Ford, Peter  
**Subject:** FW: interesting opinion related to Hopi case

Caroline (Carrie) Wehling  
Office of General Counsel  
Water Law Office -- SDWA team leader  
Cross-Cutting Issues Law Office -- Administrative records and dockets  
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202-564-5492  
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**From:** Busterud, Gretchen  
**Sent:** Thursday, October 17, 2013 2:07 PM  
**To:** Campbell, Rich; Engelman, Alexa; Hagler, Tom; Jackson, Brooke-Sidney; Knapp, Michael; Wehling, Carrie; Siegal, Tod; Newton, Mimi  
**Subject:**

## Ex. 5 Attorney Work Product (AWP)

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